A

CALM INQUIRY

INTO THE

OFFICE AND DUTIES OF JURYMEN

IN CASES OF

HIGH-TREASON:

WITH

SEASONABLE REMARKS,

EARNESTLY RECOMMENDED TO THEIR ATTENTION

IN THE PRESENT CRISIS.

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INTRODUCTION.

THERE are few ſubjects, at this very intereſting criſis, on which the public mind has been more agitated than the queſtion of the Trials now commenced for HIGH-TREASON. They preſent, indeed, the ſtrongeſt claim to attention, ſince in the deciſions to which they ſhall give riſe, and the mode in which they ſhall be conducted, the moſt important intereſts of the conſtitution are involved.

With reſpect to the object of thoſe trials, and the characters of the parties implicated

implicated in their iſſue, opinion is widely divided. There are ſome who conceive that a deep and dangerous conſpiracy has for ſome time been going on in this coúntry, for a purpoſe no lèſs deteſtable than to overturn the eſtabliſhed government, and introduce into this iſland a revolution ſimilar to what has lately taken place in a neighbouring ſtate; that of this conſpiracy the priſoners have been the chief contrivers, and the moſt active promoters; and that it is neceſſary that they ſhould fall victims of the juſtice of the law, in order that the conſtitution, whoſe deſtruction they had planned, may derive ſtrength and ſtability from the ſalutary exertion of its vengeance, and others, by their fate, be deterred from engaging in like attempts. Some again there are of opinion, that theſe men have in no

inſtance ſtept beyond the ſtrict limits of the conſtitution; that they have only availed themſelves of that freedom of diſcuſſion which is the undoubted privilege of every Britiſh ſubject; and that they are now brought forward as the victims of a ſyſtem of falſe alarm, originating from thoſe in power, artfully fomented for political purpoſes, and which would be apt to loſe its effect on the public mind if not kept alive by the influence of judicial terror.

Into the examination of theſe opinions I ſhall not at preſent enter. I muſt own, however, that I have never been ſo ſtrongly infected with a ſpirit of alarm, as to apprehend that the Britiſh conſtitution was much in danger, from a tendency to diſaffection on the part of its ſubjects, or the effects of any

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internal machinations; neither can I eaſily be perſuaded, that there exiſt Britiſh miniſters ſo devoid of feeling, ſo loſt to all principle, as to be prepared coolly to ſacrifice the lives of innocent men, for the vile purpoſe of public deluſion; much leſs that they can be ſo abſurd as to expect to find in Britiſh jurymen the eaſy dupes of their infamous arts, or the convenient tools of their inhuman policy. But it appeared to me extremely material, amidſt the agitation of the public mind, and the diviſion of public ſentiment, that jurymen ſhould be reminded of the nature and extent of the functions to which they are called by their country, and exhorted, on a queſtion of ſuch magnitude and importance, not to truſt out of their own hands the ſacred power with which they are inveſted by the conſtitution. From

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the reſult of the ſhort inquiry now ſubmitted to their attention, I truſt it will appear to the readers, as well as to me, that the regulations of the Britiſh conſtitution, as they apply to the caſe of the perſons to be tried, are at once wiſe and merciful, calculated to give effect to the operations of juſtice and to guard againſt the encroachments of oppreſſion.

The member of no ſociety, and the adherent of no party, the intereſt I take in the event of their trials, ariſes merely from my ſympathy with the caſe of twelve men expoſed to ſuffer as traitors, and my deſire that they ſhould enjoy the benefit of that fair and impartial trial to which, by the law of England, they are entitled.

Sorry, indeed, ſhould I be, that the Britiſh conſtitution, which has ſo well provided for its own ſecurity, by affording

ing equal protection to all its ſubjects, ſhould ever be attempted to be defended on falſe principles, or its intereſts ſeparated from thoſe of juſtice and humanity. From theſe it muſt derive its permanence and ſtability, they form its brighteſt ornament and firmeſt ſupport: for while the ſteady and impartial adminiſtration of juſtice is neceſſary to render it formidable to its enemies, the mild and benignant ſpirit of humanity, with which it is accompanied, can alone enſure its reign in the hearts of its ſubjects.

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CALM INQUIRY,

&c. &c.

IN an inquiry of this ſort, the firſt queſtion to be aſked is, What is the proper deſcription of a juryman, by the laws of England, in the caſe of high-treaſon? By the expreſs words of the ſtatute, he ought to be a perſon of the ſame condition with thoſe whom he is to try: the reaſon of this is evident. As the charge is of a nature ſo delicate and important, it is proper that the jurors ſhould be qualified in every reſpect to enter into the feelings of the perſons accuſed, and be likewiſe bound to provide for their intereſts as if they were their own. This deſcription, that they ſhall *be perſons of their own condition*, applies particularly

to the ſituation of jurymen as contraſted with that of the judge. The jurymen are twelve, ſuppoſed to be equals and neighbours of the perſons accuſed, choſen indifferently, and ſuperior to all ſuſpicion*, without any intereſt, except that of juſtice, and without any partiality, except (where the circumſtances are ſuch as incline them) to the ſide of mercy. Whereas the judge is one in a ſituation remote from that of the party accuſed, and therefore not ſo capable of entering into his feelings; and in conſequence of his connection with the crown, from which he derives his appointment, liable to be influenced by undue or corrupt motives†. The ſame remark, in the caſe of commoners, applies to peers, who are not admitted to be of the jury becauſe they might be ſuppoſed to be influenced by the prejudices of rank, and by their partiality for the throne, as the fountain of honour. Such is the wiſe and admirable proviſion which our anceſtors have made, with reſpect to

* 4 Black. Com. page 350.

† Ibid. 349

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the deſcription of perſons qualified to ſerve as jurors, in order that juſtice ſhould be equitably, impartially, and leniently adminiſtered to all ranks and conditions of ſubjects.

The next queſtion to be aſked is, What is the legitimate province of the jury? "A jury of twelve men are by our laws "the only proper judges of the whole "matter in iſſue before them*," and that as well of the law as of the fact†. And herein conſiſts the grand diſtinction between civil and criminal caſes. In civil caſes the jury are bound to abide in their deciſion by the law as explained by the judge, their province is ſolely to find the fact, which itſelf is deciſive; the intention is not at all looked to. And in ſuch caſes it is to be recollected, that the court have the power of ſetting the verdict aſide if found contrary to the law. But in criminal trials it is exactly the reverſe; the jury have the caſe entirely in their

* 4th Coke's Inſtitutes, 84.

† Vide Libel Bill.

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own hands*, and are to form their judgment upon the whole of it, not only the act alledged to be criminal, but the motive of the perſon accuſed, and the intention with which it was committed; the intention, as has been remarked, is the very pith of the cauſe. They are not to liſten to the mere dicta of a judge, who ſhall in ſuch an inſtance interpoſe with his opinion, or ſuffer themſelves to be in the ſmalleſt degree influenced by what may appear to be his ſentiments of the matter; but they are to decide for themſelves, on the whole of the tranſaction, and from their own full and unbiaſſed inveſtigation of all the accompanying circumſtances, to find their verdict, innocent or guilty. The jury are to conſider themſelves as inveſted with the ſolemn function of judging of the hearts of the perſons accuſed. In the diſcharge of ſo awful a truſt, they are bound to have recourſe to every means of inveſtigation; and they cannot anſwer to their own conſciences if they find a verdict

* See King, v. Proprietors of Morning Chronicle.

guilty,

guilty, upon any other ground than a full, clear, and unequivocal conviction of the wicked and malicious intentions of the party before them.

Such being the province of the jury in all criminal cases, the same observations apply with equal if not greater force to the case of high-treason than any other. For the crime of high-treason being, as described by Blackstone, the highest civil crime of which a member of the community can be guilty; in proportion to its magnitude, as affecting the interests of the country, and the severity of the judgment following upon conviction, there is imposed upon the jury the duty of a more full and rigorous investigation of the whole of the transaction and its accompanying circumstances; and that from the double motive of their regard to the welfare of that country which they represent, and the justice which by their oaths they are bound to administer to the prisoner upon whom they sit in judgment. It is peculiarly fortunate for the subject, and is to

be conſidered as one of the chief excellencies of our criminal code, that the crime of high-treaſon, ſo penal in its conſequences, is clearly and unequivocally defined by the ſtatute of 25th EDWARD III. which is to be regarded as the great land-mark of treaſon; the jury are by it freed from all intricacy or doubt, and are therefore in no danger of being led into a violation of their duty, either by miſtake or miſconſtruction. This ſtatute, both in the ſpirit and the letter, is ſo plain and intelligible, that it cannot eaſily be miſtaken, or unintentionally miſconſtrued.

And this is a circumſtance the more peculiarly fortunate, as it has at different periods of our hiſtory been attempted to be done away or ſet aſide, by the introduction of conſtructive and extravagant treaſons; it becomes, therefore, indiſpenſably neceſſary that the jury ſhould not only completely comprehend the general principle recognized by the legiſlature, but reſort likewiſe to the preciſe words adopted by them in penning the ſtatute.

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Here we cannot do better than quote the expreſſions of a character of the higheſt legal authority, the learned and able commentator on the laws of England, Mr. Juſtice Blackſtone.

* " As this is the higheſt civil crime, which (conſidered as a member of the community) any man can poſſibly commit, it ought therefore to be preciſely aſcertained. For, if the crime of treaſon be indeterminate, this alone (ſays the preſident Monteſquieu) is ſufficient to make any government degenerate into arbitrary power. And yet, by the ancient common law, there was a great latitude left in the breaſt of the judges, to determine what was treaſon or not ſo: whereby the creatures of tyrannical princes had opportunity to create abundance of *conſtructive* treaſons; that is, to raiſe by forced and arbitrary conſtructions, offences into the crime and puniſhment of treaſon, which never were ſuſpected to be ſuch."

* 4 Vol. page 75, 9th edition, 1783.

After

After mentioning ſome inſtances, he goes on, page 76.

" But, however, to prevent the inconveniences which began to ariſe in England from this multitude of conſtructive treaſons, the ſtatute 25th EDWARD III. c. 2. was made, which defines what offences only for the future ſhould be held to be treaſon: in like manner as the *Lex Julia Majeſtatis* among the Romans, promulged by Auguſtus Cæſar, comprehended all the ancient laws that had before been enacted to puniſh tranſgreſſors againſt the ſtate. This ſtatute muſt therefore be *our text and guide*, in order to examine into the ſeveral ſpecies of high-treaſon, and we ſhall find that it comprehends all kinds of high-treaſon under ſeven diſtinct branches."

After having gone through the ſeven diſtinct branches and their deciſions, he proceeds in page 85 thus, and *which merits particular attention*:—

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" Thus careful was the legiſlature in the reign of EDWARD III. to ſpecify and reduce to a certainty the vague notions of treaſon that had formerly prevailed in our courts. But the act does not ſtop here, but goes on: " Becauſe other like caſes of " treaſon may happen in time to come, " which cannot be thought of nor declared " at preſent: it is accorded, that if any " other caſe *ſuppoſed to be treaſon, which is* " *not above ſpecified,* doth happen before " any judge, the judge ſhall tarry without " going to judgment of the treaſon, till the " cauſe be ſhewed and declared before the " king and his parliament whether it ought " to be judged *treaſon* or *other felony.*" Sir Matthew Hale (the learned commentator, proceeds) is very high in his encomiums on the great wiſdom and care of the parliament, in thus keeping judges within the proper *bounds and limits* of this act, by not ſuffering them to run out (upon their own opinions) into conſtructive treaſons, though in caſes that ſeem to them to have a like parity of reaſon; but reſerving them to the deciſion of parliament. This is a great ſe-

curity to the public, the judges, and even this *ſacred* act itſelf, and leaves a weighty memento to judges to be careful and not over-haſty in letting in treaſons by conſtruction or interpretation, eſpecially in new caſes that have not been reſolved and ſettled. Secondly, he obſerves, that as the authoritative deciſion of theſe *caſus omiſſi* is reſerved to the king and parliament, the moſt regular way to do it is by a new declarative act; and therefore the opinion of any one or of both Houſes, though of very reſpectable weight, is not that ſolemn declaration referred to by this act, as the only criterion for judging of future treaſon."

The learned commentator then proceeds to ſhew, that in conſequence of this power conſtitutionally inherent, (page 85) "The legiſlature was extremely liberal in declaring new treaſons in the unfortunate reign of King Richard II. as particularly the killing of an ambaſſador was made ſo, which ſeems founded upon better reaſon than a multitude of other points that were then ſtrained up to this high offence: the moſt

moſt arbitrary and abſurd of all, which was by the ſtat. 21 RICH. II. c. 3. which made the bare purpoſe and intent of killing or depoſing the king, without any overt-act to demonſtrate it, high-treaſon. And yet ſo little effect have over-violent laws to prevent any crime, that within two years afterwards, this very prince was both depoſed and murdered. And in the firſt year of his ſucceſſor's reign, an act was paſſed, reciting, "That no man knew how he "ought to behave himſelf to do, ſpeak, or "ſay, for doubt of ſuch pains of treaſon: "and therefore it was accorded, that in "no time to come, any treaſon be judged "otherwiſe than was ordained by the ſtatute "of king EDWARD III." This at once ſwept away the whole load of *extravagant* treaſons introduced in the time of Richard II." Page 86.

But afterwards, between the reign of Henry IV. and Queen Mary, and particularly in the bloody reign of Henry VIII. the ſpirit of inventing new and ſtrange treaſons was revived.

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The judge then proceeds to ſtate ſome of theſe new-fangled treaſons, which were totally abrogated by the ſtat. 1 MAR. c. 1. *which once more* reduced all treaſons to the ſtandard of the ſtatute of the 25th EDWARD III.

The new treaſons created ſince the ſtatute of 1 MAR. c. 1. and *not comprehended under the deſcription* of ſtatute 25 EDW. III. are compriſed under three heads:

1ſt. Such as relate to Papiſts. 2d. Such as relate to falſifying the coin or other royal ſignatures. 3d. Such as are created for the ſecurity of the Proteſtant ſucceſſion in the Houſe of Hanover.

The paſſage of the learned commentator, which directs our attention to the general clauſe in the ſtatute, is extremely important; and it draws thoſe inferences, to which the common ſenſe of every reader muſt ſubſcribe. The paſſage in the act, is expreſsly intended to exclude the interference of the judge in caſes of high-treaſon,

treaſon, and to provide for the ſecurity of the ſubject by laying down that nothing which is not expreſsly ſpecified by the ſtatute itſelf, ſhall be accounted high-treaſon, except by particular application to the king and his parliament, or by the ſolemnity of a particular act of the legiſlature.

From this ſhort hiſtory of the law of high-treaſon, ſome very important conſequences may be deduced; firſt, that the ſtatute of EDW. III. has, at all periods of our hiſtory, been conſidered as the great ſtandard on this ſubject; and ſo much was its authority reſpected, that, even in thoſe arbitrary reigns, where it was thought expedient by the perſons in power to create new-fangled and extravagant treaſons, they did not attempt to put forced conſtructions on the ſtatute itſelf, but in compliance with its enactment, had recourſe to the ſolemnity of an expreſs act of the legiſlature, as a foundation for their infamous and oppreſſive proceedings. Secondly, when the particular views and intereſts, which induced the princes or miniſters of the time to bring forward

forward theſe particular acts, had ceaſed, we find the temporary reign of corrupt influence and legal injuſtice, again ſucceeded by a proof of returning integrity and good ſenſe, on the part of the legiſlature; and the ſtatute of EDW. III. brought forward with freſh luſtre, and reſtored to its place and dignity, as the ſole ſtandard and undiſputed rule of the law of treaſon. The ſtatute indeed reſts on its own baſis, it ſtands in need of neither commentary nor encomium, its firſt merit is that from its extreme ſimplicity it requires no partial explanation, and perhaps its beſt praiſe is that it defies all intereſted eulogium. Thirdly, a moſt material fact, which cannot be too deeply impreſſed on the minds of jurymen, is, that when under a profligate reign, corrupt judges have preſumed to miſinterpret the original ſtatute, in order to build upon it conſtructive treaſons; and in conſequence of ſuch repreſentations and other undue influence, juries have been induced to bring in a verdict guilty: the pureſt patriots whom England ever ſaw, have ſuffered as traitors on the ſcaffold: impartial

poſterity have reverſed the ſentence, and have transferred the imputation of infamy from the memory of the undeſerving ſufferers, to that of the judge and jury, who, by an intereſted ſacrifice of their duty, or a tame reſignation of their rights, diſgraced the venerable ſeat of juſtice, and betrayed the ſacred truſt which they held from their country. Fourthly, from the preceding propoſitions, it is evident that no precedent whatever, of any deciſion in the law of treaſon, not warranted by the ſtatute of EDW. III. ought in the preſent moment to be allowed the ſmalleſt weight; and that any caſe of conſtructive treaſon, not directly ſpecified in that ſtatute, cannot conſtitutionally be brought forward without a diſtinct and expreſs interference of the legiſlature.

There are ſome conſiderations, which it is more particularly neceſſary to preſs home to the minds of the jurymen, who are called to try the perſons at preſent indicted on a charge of high-treaſon. And firſt, it may be proper again to advert to the nature

nature of their office, and the duty which it impoſes on them. They are called to try the whole of the caſe, and to decide both upon the law and the fact. This power they are bound to exerciſe in its fulleſt extent. They are therefore to diſmiſs from their minds any impreſſion that may have been previouſly attempted to be given them of the guilt or innocence of the parties accuſed, and indeed every conſideration that might tend to have an undue influence on their deciſion. They are bound to leave their minds open for a full and free inveſtigation of the merits of the caſe, and to conſider whatever ſhall appear upon the trial exactly, as if then laid before them for the firſt time. They ought to beware of forming any prejudice againſt the priſoners from the ſteps already taken againſt them, or giving credit to miniſters for any information obtained by ſecret examination of their ſuppoſed criminal and dangerous deſigns. The conſtitution which has appointed them ſole judges of the caſe, has likewiſe in the mode of conducting the trial, furniſhed them with the full means of

inveſtigation,

inveſtigation, the only means which they are bound to employ. Whatever may be their opinion of the integrity and wiſdom of miniſters, they have in the preſent inſtance no confidence to give away. To exerciſe confidence, where they are called to decide from the reſult of their own impartial inveſtigation, and the evidence of incontrovertible facts, would be in reality to deſtroy the end of their own inſtitution; to betray the ſacred truſt which they hold from their country, and to ſurrender the moſt invaluable privilege of the Britiſh conſtitution. To induce them to give no confidence in the preſent inſtance, it is ſufficient that it is poſſible that miniſters may be corrupt, or that they may be miſtaken; and that in the ſteps which they have taken with reſpect to thoſe men, they may have proceeded upon grounds of intereſted policy, or falſe information. Even were this impoſſible, and it could be ſuppoſed that miniſters were liable to no error, and incapable of any abuſe of power, jurymen in the diſcharge of that duty to which they are called by their country, would equally

be bound to give them no confidence, becauſe they, not miniſters, are in all caſes the ſole competent judges of the guilt or innocence of the perſons accuſed. On the ſame principle, they are bound not to ſuffer themſelves to be influenced by any opinion delivered by the judge, who has his peculiar functions, but of a ſubordinate nature, and perfectly diſtinct from thoſe of the jury. He may be allowed (and that only in the inſtances where it is particularly requeſted by the jury) to ſtate to them what is the law of the caſe; but he is by no means warranted to dictate their deciſion upon it. Were the judge indeed to preſcribe the deciſion, what would be the uſe of the inſtitution of a jury, who could then be only conſidered as the reporters of his verdict. Whereas the conſtitution has expreſsly placed them in the ſituation between the crown, the judge, and the priſoners, to provide for the equal and impartial adminiſtration of juſtice, and to fence it on one hand againſt the oppreſſion of power, and on the other againſt the miſconſtruction of law. They in fact repreſent the country, with

with whoſe intereſt they are intruſted, and they cannot give confidence either to the crown or the judge, without betraying the rights of the ſubject, and ſurrendering the conſtitution itſelf. For were ſuch confidence to be given even to a virtuous prince, or an upright judge, what would be the conſequence? The liberties and property of the ſubject, all that is dear and ſacred in our conſtitution, would in future be at the mercy of every corrupt judge, and every profligate adminiſtration. The argument againſt confidence on the part of the jury, applies ſtill more ſtrongly in criminal caſes, like the preſent, where the king is himſelf the proſecutor. Liſten on this head to the great oracle of the law, "In times of difficulty and danger, ſays "Blackſtone, more is to be apprehended "from the violence and partiality of judges "appointed by the crown in ſuits between "the king and the ſubject, than in diſputes "between one individual and another *." Jurymen ought alſo to be on their guard not to ſuffer their minds to be influenced

* 4 Black. Com. 349.

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by the nature of the crime alledged. On the contrary, in proportion to its magnitude, and the ſeverity of the puniſhment involved, the greater is the neceſſity for a rigorous and impartial inveſtigation of the facts by which the charge is ſubſtantiated. Nor ought the circumſtance that the grand-jury have found the bill, to carry along with it the ſmalleſt weight. Their province is only to aſcertain, that there appears ſufficient ground for inquiry. To the petty jury remains all the taſk of particular inveſtigation. By the humane ſpirit of the law of England, every man is ſuppoſed to be innocent till the period of his conviction: no ſecret or partial evidence is admiſſible with reſpect to the queſtion of guilt or innocence: every man is entitled to all the benefit of a fair trial, and to the privilege of being heard in his own cauſe. No man is required to convict himſelf; brought to the bar of his country he pleads not guilty. In this ſituation his jury who repreſent that country find him, and are bound after a full and open hearing of parties, and upon the clear and incontrover-

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tible evidence of facts, to bring in their verdict of condemnation, or acquittal; to reſtore him to the honours of an unſullied fame, or overwhelm him in the detection of convicted guilt. It is evident, that though treaſon be the higheſt civil crime, that the perſon ſimply accuſed of it, does not therefore become the moſt atrocious of criminals. A charge of treaſon, it is to be recollected, has frequently been made an engine of political craft in the hands of deſigning men, and brought forward to ſerve a particular purpoſe, or ruin an innocent or meritorious individual.

The hiſtory of this country preſents us with ſeveral inſtances of treaſon, altogether factitious, invented to ſerve the views of a profligate adminiſtration, and with others, in which, actions in themſelves perfectly legal, or, at moſt, amounting to ſlight miſdemeanors, have been conſtrued as treaſonable by ſervile and corrupt judges. It becomes jurymen, indeed, to be exceedingly cautious before they expoſe a fellow-ſubject to all the horrors of that

ſentence

ſentence which follows upon a conviction of high-treaſon: a ſentence, the words of which, it is to be lamented, yet remain to diſgrace the criminal code of Great-Britain, though Britiſh humanity would ſhudder at carrying it into execution according to the letter; a ſentence, at the bare recital of which, the blood runs cold, and the heart ſickens with diſguſt. "To ſhed "the blood of a fellow-creature (ſays "Blackſtone, vol. 4. page 11.) is a matter "that requires the greateſt deliberation, "and the fulleſt conviction of our own "authority; for life is the immediate gift "of God to man, which neither he can "reſign, nor can it be taken from him, "unleſs by the command or permiſſion of "him who gave it; either expreſsly re-"vealed, or collected from the laws of "nature or ſociety, by clear, indiſputa-"able demonſtration." But if this tenderneſs to human life be due in all caſes, more particularly in thoſe of treaſon, where conviction is not only followed by a capital puniſhment, but loads the memory of the ſufferer with the blackeſt imputation.

tion. In a caſe, therefore, involving not only the deprivation of life, but entailing diſgrace and infamy, extending in its dreadful penalties beyond the perſon of the ſufferer, and producing, through all the ſeries of his connections, a wide ſpread circle of calamity, no looſe or ambiguous charge, no doubtful or contradictory teſtimony, no remote or conſtructive inference of guilt, ought to be admitted. All ought to be preciſe, plain, and demonſtrative, the proof of the overt-act, the evidence of the guilty intention, and the ſtrict application of the law to the particular caſe. Did there appear but the ſlighteſt contradiction on the face of the evidence, or remain in his own mind the ſmalleſt ſhadow of doubt with reſpect to the merits of the caſe, ſuch a circumſtance would, of itſelf, be ſufficient to deter an honeſt and humane juryman from finding a verdict guilty. The life, the property, and the fair fame of a fellow-ſubject, are not to be wantonly ſacrificed, or ſported with on ſlight or frivolous grounds. The evidence of guilt ought to be clear as

noon-day, and the verdict found in ſuch circumſtances, and upon ſuch proof, as to compel univerſal aſſent to the juſtice of its deciſion.

But the moſt important conſideration of all yet remains to be ſtated. There is nothing, perhaps, which will have more weight with the jurymen, or diſpoſe them more to give credit to the alledged criminality of the perſons indicted, than the particular period at which theſe treaſons are brought forward. For ſome time paſt the public mind has been agitated to an extraordinary degree, by a ſeries of events, in point of novelty, magnitude, and the rapidity of their ſucceſſion, unparalleled, perhaps, in the hiſtory of mankind. In conſequence of the dreadful and unexpected ſcenes which men have lately been called to witneſs, there are few changes, of a nature either ſo abſurd or atrocious, which they are not, in the preſent moment, prepared to believe. Fear and credulity are generally companions. The ſudden and unexpected changes which men have witneſſed,

witneſſed, have diſpoſed them readily to give credit to accounts of new and unheard-of attempts; and the horrid and ſanguinary exceſſes with which theſe changes have been accompanied, have propagated a ſpirit of alarm and terror. The eventful and awful revolution which has been exhibited in a neighbouring country, and which has there been attended with the ſubverſion of all eſtabliſhments, has inſpired ſome perſons with apprehenſions for the ſafety of the Britiſh conſtitution. It is not our object to inquire how far this terror may have been well founded in the firſt inſtance, or how far it may have been afterwards improved for political purpoſes; ſuffice it to ſay, that ſuch has been the caſe. The natural conſequence of terror was to engender ſuſpicion, and the exiſtence of ſocieties of men inimical to the Britiſh conſtitution, and engaged in attempts to overturn it, was currently reported and believed by many, for almoſt two years before the conduct of the perſons, now indicted, had ever come into queſtion. It is evident,

therefore, that theſe perſons labour under this peculiar diſadvantage, that the public mind was long before prepared, by a train of circumſtances, to entertain exactly ſuch a charge, as that which is now exhibited. But jurymen ought not to be led away by the dominion of prejudice; they ought, as we before ſtated, to regard the charge againſt thoſe perſons with the ſame diſpaſſionate ſentiments, as if it was now preſented to them for the firſt time, and to require the ſame demonſtrative evidence, in order to be ſatisfied of its truth. But there is another conſequence of prejudice againſt which they ought alſo to be on their guard: it is always the effect of fear to magnify danger; and where there exiſts this exceſſive apprehenſion of danger it is ſeldom found to be accompanied with much delicacy with reſpect to the nature of the proof required, in order to aſcertain how far it is well founded. That every man, who ſhall be of the jury on this occaſion, loves the Britiſh conſtitution, and is anxious that his deciſion ſhould be the means of preſerving

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it, I firmly hope and truſt. That there exiſts no ground for alarm, I will not pretend to affirm; on the contrary, I think there is much, though, perhaps, not from that quarter where it is generally apprehended: the danger which I conceive, in the preſent moment, moſt to be dreaded, is, that our fears for the conſtitution ſhould induce us to take improper means of inſuring its ſafety, and that we, as is commonly the caſe in the hour of exceſſive alarm, ſhould endanger the very bleſſing we ſo much prize, by our too great anxiety to preſerve it. Let the jury then beware how, with reſpect to theſe men, they form their deciſion from the influence of prejudice and alarm, and depart from the expreſs letter and ſpirit of the law. If at any moment it was neceſſary to look to the genuine principles and pure practice of the conſtitution, that moment is the preſent. If the danger that threatened the conſtitution was to be warded off by the ſacrifice of twelve individuals, however that ſacrifice might be contrary to the principles of juſtice and humanity, it might, however,

however, be vindicated on the ground of expediency (though an honeſt juryman would even grudge to purchaſe the ſafety of the conſtitution at ſuch a price); but this, ſurely, will not be contended to be the caſe by the friends of the conſtitution. The fabric has, ſurely, not ſo entirely loſt its root in the affections of the people as to require to be ſupported by examples of judicial ſeverity. If the conſtitution was, indeed, in a condition ſo tottering, its defence might well be abandoned as a deſperate taſk. But let us hear no more of an argument equally inhuman and abſurd, though I am afraid it has had but too much influence in reconciling the minds of weak, though well-meaning men, to ſeverities which otherwiſe they could never have approved; I mean what has been ſo repeatedly urged of the neceſſity of terrible examples in the preſent moment. Such examples, if they are not ſanctioned by juſtice, can only be odious and hurtful; nay, I will go further, I will ſay, that though the ſacrifice of theſe twelve men cannot certainly have the effect to ward off

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any impending danger, yet, that in their fate, that of the conſtitution, may ultimately be involved. For, if in conducting their trial, the jury ſhrink from their duty, or ſacrifice any part of their rights, either to their confidence in miniſters, or to the diſcretion of judges, the conſtitution is already gone; it is then, indeed, loſt, paſt redemption, and for ever. If the jury then ſhall find them guilty of any of the treaſons enumerated in the ſtatute of EDWARD III. if they find the overt-act ſubſtantiated by clear and incontrovertible evidence, and in ſuch circumſtances as to leave no doubt in their minds, with reſpect to the criminal intention; let them diſcharge what they owe to their conſcience and their country, in bringing in their verdict guilty; and let the puniſhmen of treaſon be the lot of traitors. But if, on the contrary, they find either that the facts charged in the indictment do not, in themſelves, amount to treaſon, or are not capable of demonſtrative proof; if they find that a number of ſmaller charges are brought together againſt the priſoners,

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in order to make up that ſum of guilt which amounts to treaſon; if they find that theſe charges are ſupported by defective evidence, and accompanied with ſuch circumſtances, as to leave conſiderable doubt with reſpect to the criminal intention, let them pronounce their verdict of acquittal, and vindicate the juſtice and humanity of the Britiſh conſtitution in the wiſe proviſion, which it has made, in all poſſible caſes, for the protection of the accuſed, and the vindication of the innocent.

Of the indictment, before I conclude, I ſhall beg leave to ſay a few words. It contains not, as has been uſual in ſuch indictments, a brief and ſimple recital of one great act of treaſon, but a variety of complicated charges, built upon one another. Among theſe charges I find that of meeting in order to concert the plan of a convention, of appointing delegates for the purpoſe, and of exhorting others by writings and pamphlets, to adopt the ſame meaſure. Of this propoſed convention, the oſtenſible object was, to take the neceſſary

neceſſary means to procure a reform in parliament, and ſo far no criminality can poſſibly attach to it, ſince exactly the ſame ſteps have, at different times, been adopted by the greateſt and beſt men whom this country ever produced, with a view to preciſely the ſame object. The real object of theſe men, it is, however, aſſerted, was to overturn the conſtitution. And when I look to the charge of the Lord Chief Juſtice Eyre, on which I have purpoſely avoided touching, it ſeems probable that this will be the ground upon which their criminalty will be attempted to be eſtabliſhed. This, however, is an accuſation; in entertaining which, a Britiſh jury cannot be too cautious. It is a treaſon of a nature for which no ſtatute has provided, and which, as the Lord Chief Juſtice himſelf ſays, " no lawyer ever dared to contemplate in its fulleſt extent." Let the jury then beware how, by their deciſion, they give countenance to the introduction of new treaſons, or open the floodgate for a torrent of abuſes, which, if ſuffered to ruſh in under the ſhape of con-

ſtructive treaſons, may overwhelm the conſtitution.

In all periods of our hiſtory there have been men of the ſoundeſt judgment, and of the moſt irreproachable integrity; and I hope it will not be contended that there do not exiſt ſuch in the preſent moment, the friends of a rational and temperate reform; not becauſe they were enemies to the conſtitution, or deſirous to overturn it, but becauſe they loved it and wiſhed to ſecure its ſtability on the firmeſt baſis. They were convinced of the neceſſity of, from time to time, recurring to the original principles of the conſtitution, in order to preſerve it in its purity, and to rid it of thoſe defects which might have crept in from the introduction of abuſes and the lapſe of years, and which, if ſuffered to increaſe, might, at length, become inveterate. Yet even againſt ſuch men, their political adverſaries have ſometimes attempted to inſinuate the charge of entertaining views hoſtile to the conſtitution; to inſinuate ſuch a charge, I ſay, becauſe

becauſe they dared not openly to bring forward what would have been contradicted by the teſtimony of acknowledged character and the uniform evidence of conduct. For among ſuch advocates of rational and temperate reform, the conſtitution has, in different trying periods, ranked the firmeſt aſſertors of its principles, and its moſt ſtrenuous champions againſt dangerous innovations. There have likewiſe, in all periods of our hiſtory, exiſted ſpeculative and ingenious men, who have amuſed themſelves in the retirement of their cloſets with forming theoretical plans of government, and who, thinking too favourably of human nature, have looked forward to an æra of ideal perfection in ſociety, which experience has hitherto ſhewn to be ſufficiently remote: but it never has been found that theſe men, have been dangerous members of the community, or that though from ſyſtem, they were the admirers of a viſionary republic, they were not, at the ſame time, in their practice, very peaceable ſubjects of a limited monarchy.

There have been others of a different character, who diſſatisfied with perſons in power, or the meaſures of the exiſting adminiſtration, have not been ſufficiently careful in their invectives againſt them, to diſcriminate from what might be conſtrued to reflect on the conſtitution, and who have allowed themſelves to be ſo far carried away by political animoſity, as to launch out into general and unqualified cenſure of the government of the country. But it is to be recollected, that the indignation excited by real or fancied abuſe, though it may break out in expreſſions of intemperance, can upon no principles of candor be ſuppoſed to infer a determined hoſtility to the conſtitution itſelf, much leſs a ſerious intention to overturn it.

Such a conduct as we have now mentioned, can only mark an unguarded violence of temper, from which certainly there is but little real danger to be apprehended: nor can perſons of this deſcription be deemed criminal, further than imprudence may be ſuppoſed

ſuppoſed to conſtitute a crime. To theſe, perhaps, may be added another claſs of weak and credulous men, who allow themſelves either to catch the language of the others, and retail it from the harmleſs motive of hearing themſelves talk; or who are betrayed by thoſe who, for the baſeſt purpoſes, inſinuate themſelves into their confidence, into expreſſions of which they are not aware of the extent, and to which they themſelves attach no meaning—expreſſions firſt prompted by the artful agents who mean to make them the foundation of their future diſcoveries. I will not pretend to ſay whether the perſons indicted may be found to come under any of theſe deſcriptions; it is ſufficient for me to ſuppoſe that ſuch claſſes of men may exiſt, againſt whom ſuch a charge as that in the indictment of an attempt to overturn the conſtitution might be brought, and yet to whom no honeſt or humane juryman would be induced to impute the guilt of high-treaſon. It is to be feared, however, that the atrocity of the charge alledged againſt theſe men will be attempted to be

enhanced

enhanced from the circumſtances of the time; and that the example of what has lately happened in France, will be brought forward in order to attach the deepeſt criminality to opinions which would formerly have been regarded as the mere dreams of ſpeculation; and to acts, which, at moſt, would have been conſtrued to amount to ſimple ſedition.

But it is to be remembered, that the revolution in France, which terminated in the ſubverſion of the monarchy, and which gives greater weight and credibility to the charge of theſe perſons having planned a ſimilar revolution in this country, had the effect to call forth the moſt ardent expreſſions of loyalty from all quarters of the kingdom. Is it probable then that theſe perſons ſhould have choſen ſuch a moment to concert the deſtruction of the Britiſh monarchy, in oppoſition to the almoſt unanimous ſentiments of the people? If the circumſtances of the times may be ſuppoſed then in one way to beget a prejudice againſt them, why ought they not

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in another to be allowed to operate in their favour? Beſides, ſuppoſing their deſign to have been ſuch as is alledged, what were the means which they could propoſe to themſelves of carrying it into execution? Was their object to ſtrike at once at the exiſtence of the monarchy, through the ſacred perſon of his Majeſty? No ſuch intention is I underſtand imputed to them. The ſtory lately trumped up of a plot to aſſaſſinate the King by means of a poiſoned arrow, too ridiculous to have claimed a moment's attention, except that where ſo dear an intereſt as the life of a monarch, univerſally beloved by his ſubjects, is concerned, the ſmalleſt ſurmiſe of danger is ſufficient to create an alarm, has long ſince been abandoned to the ſilent contempt due to a falſehood ſo bunglingly contrived, and ſo lamely ſupported. An attempt againſt the life of his Majeſty, even if ſucceſsful, could have only called forth the public vengeance againſt the aſſaſſins, excited a more complete abhorrence of their deteſtable views, and impreſſed more ſtrongly the ſentiments of loyalty and attachment to the

the throne in the minds of the people. Or ſhall we ſuppoſe that it was the intention of the perſons indicted to have riſen in open rebellion, where was the force with which they were to have effected their purpoſe? Was the monarchy, fortified with more power in the preſent moment than it almoſt poſſeſſed at any former period, ſo timid as to be ſuppoſed not even able to encounter the menaced hoſtility of a few individuals, or ſo tottering from its baſe, that the firſt blow aimed againſt it would have levelled it with the ground?

It is impoſſible to impute to them any of thoſe views, without at the ſame time ſuppoſing them to be actuated by a degree of inſanity, which would completely exempt them from all reſponſibility, and entitle them to our pity, as the unfortunate victims of a diſtempered brain, rather than to our abhorrence, as the execrable authors of a deep and dangerous plot. Let me then caution the jury to be on their guard againſt the influence of momentary deluſion, and not to lend too ready a belief

belief to the charge of a deſign to overturn the monarchy, becauſe in the preſent circumſtances it aſſumes an air of peculiar atrocity.

The more that the charge is of a nature calculated to excite their indignation and alarm their fears, the more ought they to beware of allowing it to miſlead their judgment, or warp the integrity of their deciſion. Crimes do not take their hue from the circumſtances of the times or the changes of events; nor can what was juſtifiable in me to day become, by any fair conſtruction of the law, criminal in another to-morrow. The jury, therefore, will not condemn men as traitors, under the ſtatute of EDWARD III. for a crime which does not exiſt in that ſtatute, merely becauſe they ſuppoſe that they have been implicated in a conduct which might in the preſent circumſtances have been equally dangerous with the crime of high-treaſon. The motives of the agent, and the conſequences to be apprehended from any particular line of conduct, not forbidden

bidden by the law, are merely matters of private judgment. If the jury in this caſe would do juſtice, they muſt look not to their own opinion, which can be binding only to themſelves, far leſs to the opinions of others, but to the law, the eſtabliſhed ſtandard of every man's actions, and by which the guilt or innocence of the perſons indicted can alone be determined. If new laws are neceſſary, for God's ſake let us make them; but let us beware of introducing into the conſtitution of Great-Britain the worſt ſpecies of deſpotiſm, by reſorting to old and preciſe acts of the legiſlature in order to puniſh a new and undefined ſpecies of crimes; we ſhould then convert the whole ſyſtem of the law of England into a confuſed maſs of arbitrary and unmeaning ſtatutes, fit only to be employed as an engine of political profligacy, and an inſtrument of legal oppreſſion.

When I conſider the importance of the queſtion involved in the iſſue of theſe trials; a queſtion which to me, indeed,

appears the moſt important that has occurred ſince the æra of the revolution, 1688, I muſt own that my mind is conſiderably agitated. It is not merely a queſtion whether twelve men ſhall be legally condemned or acquitted, intereſting as that conſideration muſt be to every friend of juſtice and humanity, but whether the Britiſh conſtitution itſelf ſhall be preſerved upon its true principles.

I ſee with concern and apprehenſion, how much the ſpirit of alarm lately gone abroad has tended, previous to the trials, to prejudice even the minds of honeſt and well-meaning men, againſt the characters and deſigns of the priſoners. And I am only comforted when I reflect on the noble ſtand which has, at different periods of our hiſtory, been made by Engliſh juries in behalf of the conſtitutional rights of the ſubject, in oppoſition to every ſpecies of deluſion, and all attempts of undue influence. To that ſtand we are indebted for the poſſeſſion of the ineſtimable bleſſings of our preſent conſtitution;

ſtitution; and it is only by the ſame exertions of wiſdom and integrity in the hour of alarm and danger, by which they were firſt acquired, that they can now be ſecured and conſolidated.

It is to be hoped, that the ſame ſound judgment and the ſame independent ſpirit which dictated the exertions of former juries, will not be wanting to their ſucceſſors, whenever ſimilar occaſions are offered for their exerciſe. If the Britiſh conſtitution is to ſtand, it muſt owe its ſecurity to itſelf, it muſt be ſupported on its own principles; to loſe ſight of theſe from an apprehenſion of temporary danger, in order to find new means of ſafety, would be to ſap the foundation in a vain attempt to prop the ſuperſtructure.

Into the queſtion of the guilt or innocence of the individuals now before their country, it would ill become me to enter; but ſure I am, that every honeſt juryman, and every true friend of the conſtitution, will concur with me in the ſentiment,

That

That whatever be the degree of their guilt, if it be of a nature which does not clearly come under the deſcription of high-treaſon, by the ſtatute of EDWARD III. *infinitely better were it that they ſhould be acquitted, than that the Britiſh conſtitution ſhould ſuffer violation in order to bring them to puniſhment.*

THE END.

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